

**VIRGINIA DEPARTMENT OF EDUCATION
DEPARTMENT OF SPECIAL POPULATIONS
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES**

LETTER OF FINDINGS

<p>School Division Fairfax County Public Schools Dr. Terri-Edmunds-Heard, Acting Assistant Superintendent, Special Services Ms. Dawn Schaefer, Director, Special Education Procedural Support 8270 Willow Oaks Corporate Drive – Second Floor Fairfax, Virginia 22031 TerriEdmundsHeard@fcps.edu DMSchaefer@fcps.edu</p>	<p>Parent(s) Systemic Complaint (See Appendix)</p>
<p>Case # 24-166</p>	<p>Student Systemic Complaint (See Appendix)</p>
<p>Date Complaint Received February 27, 2024</p>	<p>Complainant (if other than parent) Ms. Callie Oettinger Redacted</p>
<p>Notice of Complaint Date March 7, 2024</p>	<p>Findings Date May 31, 2024¹</p>
<p>Complaint Appeal Date July 1, 2024²</p>	<p>Corrective Action Plan Date July 1, 2024</p> <p>Send CAP to Sandra Ramsey Sandra.ramsey@doe.virginia.gov</p>
<p>Director, Dispute Resolution Patricia V. Haymes</p>	<p>Complaints Department Phone # 804-750-8143</p>

A. Applicable Regulations

On May 28, 2009, the Virginia Board of Education adopted revised regulations to reflect IDEA

¹ The original 60-day due date for this Letter of Findings was April 26, 2024. In the course of our investigation, we reviewed a sample of files for affected students. That review has resulted in the need to obtain additional information/clarification from the school division. Due to the scope of the allegations contained in the complaint, the systemic nature of the complaint, to ensure that the best interests of the students are served, and given the detailed and unique issues cited in the complaint allegations, we found that exceptional circumstances exist and extended the 60-day timeline for issuance of our findings to May 31, 2024.

² The 30-day timeline for the submission of an appeal expires on June 30, 2024, which is a Sunday. Accordingly, the findings due date is extended to the next business day, Monday, July 1, 2024.

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'04 and its 2006 implementing regulations. The Board's revised regulations became effective on July 7, 2009, and were reissued on January 25, 2010, and on July 29, 2015, at 8 VAC 20-81-10 *et seq.* (the "Virginia Regulations"). Accordingly, this office based its investigation and findings on the Virginia Regulations, which are applicable to the allegations forming the basis of the complaint. The Virginia Regulations are available online at <https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/>

B. Sufficiency of Complaint (See 34 C.F.R. § 300.153)

Prior to the issuance of the *Notice of Complaint* in this case, this office reviewed the complaint documentation and determined that it met the filing requirements of the regulations.

C. On-site Visit/Scope of Investigation

Complainant included the names of several specific students in her complaint filing, and subsequently added names of several additional students, including proffering names far after the expiration of the timeline for provision of additional information. Where possible, while remaining mindful of the need to bring this investigation to closure, we have reviewed those individual student files.³

VDOE personnel went on-site to Fairfax County Public Schools (LEA) on April 9, 2024, where we conducted interviews, obtained information on the students included in the Complaint at that time, and selected a random sample of files for purposes of our analysis of the allegations in this complaint. Follow-up activities were conducted to obtain additional information regarding the selected files.

In these findings, individual students are identified by letter on the attached Appendix. LEA is being provided with a key identifying these individual students. Parents who have asked to be included in the complaint are being provided with the Appendix and are being given the letter identification associated with their child.

³ Four individual students were identified to us by the Complainant. Three of those students' files reviewed in addition to the random sample. The fourth student was not identified for this office until May 23, 2024, and we were unable to review that student's information in time to meet our deadline for issuance of findings. All students brought to our attention are included in the class entitled to relief as set forth below, as well as all similarly situated students who were not identified, and thus, each student's parent may elect to rely on the systemic relief ordered in this case, as our office has structured the corrective action to address each affected student, whether named or not. However, if the parents of the fourth student wish to file an individual complaint, they are free to do so.

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ISSUE(S) AND REGULATIONS:

1. Individualized Education Program (IEP) - Implementation.

Complainant alleges that LEA has violated state and federal regulations regarding implementation of IEPs. Specifically:

- Complainant alleges that LEA has systemically failed to implement IEPs that provide reimbursement of expenses and compensatory education owed to students following a resolution agreement between the Office for Civil Rights (OCR) and LEA related to services following the closure of schools due to the COVID-19 Pandemic.
- Complainant’s full complaint, which referenced a previous complaint decision by this office (C24-123) and includes documentation, evidentiary materials and legal argument, was attached to the notice of complaint and should be referenced by the parties.
- Complainant alleges that FCPS, in a previous filing with this office, “admits that it is implementing the IEPs on a first-come, first-served basis, and that IEPs are in a queue for implementation.”
- Complainant further states as follows:
 - “2.8.24: FCPS staff repeated this ‘queue’ comment, when its finance office emailed Complainant: ‘The finance team is working diligently to process request in the cue.’ [sic]
 - 2.12.24: FCPS submitted a letter to parents/guardians, stating that it has “almost” processed half of the reimbursements. “Almost” half is not the same as half. See 2.12.24 letter.
 - 30 days = FCPS’ turnaround for paying vendors. Yet, it won’t provide the same courtesy to parents/guardians/students. See: <https://www.fcps.edu/about-fcps/departments-and-offices/department-financial-services/comptroller/payment>
 - Less than a week prior, FCPS led families to believe it had reimbursed at least 50%.
 - 2.6.24 FCPS’ Dawn Schaefer and Terri Edmonds-Heard spoke at a FCPS SEPTA meeting (listen to 2.6.28 SEPTA Feb meeting recording).”
 - The Complainant then includes quotes from the meeting including the following excerpt attributed to Dawn Schaefer:

“...we, we have a lot of folks working on this part time. Believe it or not, we have one person who’s allocated full time for this at this time, and that’s one of our finance management technicians.
And otherwise, we have probably, I don’t know, Terri, you might have the numbers right in front of you, but it’s probably 30 people working part time on this. We do hope

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that the new OCR plan administrator can start soon. That person has been selected and is still in the process of being hired. And so that would give us some additional assistance. And we're also looking at some other ways to creatively use some funding that was allocated that we can hire a couple other folks to assist. In terms of completion we completed 50% of reimbursements as of Friday, this past Friday, and we are working diligently to complete the rest of them as soon as possible. We have been meeting with the Comptroller and with finance staff, to look at our processes, our financial processes to ensure that they are as smooth as possible. And so just this week, there was a meeting today, in fact, with our staff supporting this to talk about the way that those processes are smoothing out, and so we, we're hoping that things will pick up even more as we add more staff and have smoothed out the processes....Last week, I reassigned one of our staff who has been working part time on this to start working on the future, what we call future reimbursements for services, where families have decided to use a private provider for services that were allocated. And she is processing those. I think I know who may have submitted that question, because we're in touch regularly. But we are working on it. And please feel free to call or email me for a very specific update for your child."

- Complainant further alleges that: "although standalone reimbursements and the reimbursements for current/future compensatory education and other services are written into IEPs that FCPS is mandated to implement within a reasonable time, FCPS has only accomplished 50% of the reimbursements....Pursuant to IDEA and implementing state regulations, IEPs must be implemented in a timely manner/reasonable time. "Backlogs" are not acceptable and/or valid reasons to delay IEP, evaluation, identification, and/or any other timelines." Parent then cites legal authority relating to timeliness of IEP implementation and other related authority regarding IDEA timelines.
- Parent continues:
 - "2.6.24: During a FCPS SEPTA meeting, Dawn Schaefer advised attendees that parents can sign IEPs with a partial consent....At about the 00:45:25, the following Q&A occurred:

SEPTA President Amanda Campbell:

"We have been asked in not too many words to accept goals we don't agree with so we can get the IEP signed, which I don't want to do, this is a legal document. Is this, should this not be something that families can sign in partial consent where they agreed to compensatory service services but do not agree with the goals and then compensatory services can be instituted from there?"

Dawn Schaefer 46:20

Absolutely. You can always agree on partial consent.

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- Neither IDEA nor implementing state regulations dictate, allow, and/or approve of LEAs placing restrictions and/or conditions on the implementation of fully and/or partially consented to IEPs subsequent to them being consented to.

Applicable Regulations:

- The IDEA implementing regulations, at 34 C.F.R. § 300.323(c), and the corresponding Virginia Regulations, at 8 VAC 20-81-110.B.2 provides that “Each local educational agency shall ensure that an IEP: a. Is in effect before special education and related services are provided to an eligible child; b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services; c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child’s IEP, or if the parent requests it; and d. Is implemented as soon as possible following parental consent to the IEP.

Findings:

The Office of Dispute Resolution finds LEA to be in noncompliance with regard to the issues in this complaint.

Analysis:

Background

- This case arises out of a resolution agreement between LEA and the Office for Civil Rights (OCR) within the United States Department of Education, dated November 30, 2022, relating to compensatory services for LEA’s asserted failure to provide FAPE during the COVID-19 school closure period.
- As a part of the resolution agreement, LEA was required, in pertinent part, to develop and implement a plan to (i) hold IEP or Section 504 team meetings for all students with disabilities under IDEA, (ii) to determine what, if any compensatory services are owed for the period in question, and to (iii) establish an “appropriate and reasonable” time-frame for the provision of those compensatory services. In lieu of providing services directly, the LEA was permitted to establish a “process to follow for requesting reimbursement for out-of-pocket expenses incurred by the parent or guardian to provide services required by the student’s ... IEP by private or non-Division personnel that were not provided by the Division” during school closures.
- The overall plan for accomplishing these tasks was captured in written procedures developed by the LEA and approved by OCR. As part of the plan, IEP teams were required to document the agreement of the team in the student’s IEP.

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- The applicable regulations under our jurisdiction in this case specify that an LEA must provide special education and related services in accordance with the child's IEP and ensure that the IEP is implemented "as soon as possible following parental consent to the IEP." In that the complaint involves both compensatory services provided by the division and parental reimbursement, we will address each category separately.

Reimbursement

- Public presentations by the LEA regarding the plan for providing reimbursement indicated that parents asking for reimbursement would need to provide the LEA with receipts indicating payment and with W-9 Forms. For services not yet provided, the LEA indicated that additional arrangements could be made for reimbursement of services from a private provider or for direct payment to a provider. The LEA stated that "parents will be reimbursed for out-of-pocket expenses, usually within 45 days."
- School division admits that it experienced difficulties in promptly reimbursing parents for a number of reasons, including the sheer volume of reimbursements to be made, staffing issues, and internal accounting and payment systems that were designed for meeting standards imposed to address public agency transparency and accounting concerns, rather than for customer ease. While we acknowledge these difficulties, our inquiry is narrow: did the division have a systemic failure to implement the provisions of IEPs relating to parent reimbursement "as soon as possible?"
- The division itself established the standard for parent expectations in this instance by publicly establishing a 45-day turnaround as the norm. However, the commencement of the 45-day turnaround appears to have been contingent upon presentation of paid receipts that corresponded to information in the IEPs and upon the parent(s)' submission of a W-9 form. While accounting practices for public agencies require appropriate documentation for reimbursement as a part of the agency's responsibility for the administration of public funds, it appears that these requirements were not always clearly understood or communicated, that issues of missing or insufficient documentation were not promptly addressed, such that, in many cases, the 45-day period for processing payments did not commence until long after the parent believed that the reimbursement was in process.
- More specifically, in the files reviewed by our office, reimbursement amounts ranged from \$500 to more than \$15,000. While all but one of the 25 files reviewed indicate that reimbursement has now been completed, the time elapsed between agreement to the IEP reflecting consent to compensatory services/reimbursement reflected only three payments being made in 45 days or less. All other reimbursements took more than twice as long, with more than 60% being outstanding for more than 150 days, and with several of those taking almost a year to process.
- Based on the foregoing, we simply cannot conclude that the provisions calling for

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reimbursement of parent's expenses were implemented in the timely fashion envisioned by the regulations.

- We do note, however, that the school division, since the beginning of 2024, has significantly improved and streamlined its processes, resulting in more than 85% of payments having been processed by the date of this Letter of Findings. We also note, that because these payments are reimbursements, by definition, the compensatory education has been provided to the students, and we find that the delay in reimbursement had no adverse effect on the Student's free appropriate public education. These factors will be taken into account with regard to corrective action outlined below.
- We acknowledge that the delay may have caused financial sacrifice, if not hardship, for some parents. Complainant has urged that we order the division to pay interest on late payments, or that we otherwise penalize the division for failure to meet prompt payment requirements applicable to state agencies. The state complaint system under IDEA is not the equivalent of a court. Our jurisdiction is limited to those matters that arise under the IDEA and that relate to the provision of FAPE to students with disabilities under the IDEA. We do not have jurisdiction over prompt payment requirements under state law.
- As for the awarding of interest, we see no provision for such payment included in the resolution agreement between OCR and the LEA, as it addresses only "reimbursement for out-of-pocket expenses."
- As a result, we find the LEA to be in noncompliance on a systemic basis for failure to implement IEPs related to parent reimbursement in accordance with the requirements of the regulations.

Compensatory Services

- Of the 25 files reviewed, seven students required additional compensatory services to be provided by the school division. Our file review indicates that services for four of the students have been delivered in full, services for one student have not been completed, but are in the process of being delivered as set out in the IEP, and that services for two students appear not to have been addressed. We will provide specific corrective action for these students under separate cover, and find the school division to be in noncompliance with regard to these students. Because of the wide variability possible in the amount and timing of compensatory services, we do not make a finding that the LEA is in noncompliance on a systemic basis with regard to the provision of compensatory services; however, because of ongoing concerns regarding this matter, we will monitor the provision of compensatory services as a part of our corrective action plan and pursuant to our general supervision authority.

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CORRECTIVE ACTION PLAN:

To address the noncompliance findings above, we direct that the LEA:

1. Provide documentation within 30 days that reimbursement for Student N identified on Appendix A has been completed, or, alternatively, provide documentation of the LEA's efforts to secure documentation necessary for completion of reimbursement.
2. With regard to completion of compensatory services for Student Q and Student S identified on Appendix A, promptly convene an IEP meeting to develop a plan for the completion of the remaining compensatory services, and provide a copy of the IEP reflecting that plan. In addition, the IEP team should consider whether the delay in providing compensatory services has caused additional need for remediation in order for the students to have received FAPE.
3. We note that, in a related letter of findings, the LEA was directed to provide our office with a plan for completion of reimbursements. Such plan should be supplemented with information on how the school division intends to complete outstanding compensatory hours.
4. Within 30 days of the date of this letter of findings, at the commencement of the school year, and at the end of each of the next three academic quarters, provide a progress report including (i) the number of students with outstanding reimbursements, and the aggregate dollar amount of outstanding reimbursements; and (ii) the number of students with remaining compensatory hours, including the number of such hours owed. The LEA should work with the Corrective Action Specialist to develop the format and to provide any additional information required for assessment of the data.
5. Based upon the analysis of the data, VDOE may conduct additional file sampling, which may result in additional individual corrective action.

The school division must complete the corrective action plan and submit supporting documentation to the CAP specialist no later than the date set forth above, or if no date is specified, no more than thirty calendar days from the date of this Letter of Findings. In the event the school division anticipates that any portion of the corrective action will require more than thirty days for completion, school division must contact the CAP specialist to provide documentation of the status of the corrective action, and to obtain approval for a revised completion schedule prior to the due date for the CAP. Any subsequent steps required to satisfy the corrective action should be documented, and such documentation submitted to this office on a schedule to be established by

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the Corrective Action Specialist in consultation with the LEA but should be completed no later than [30 business days from the LOF date unless circumstances warrant otherwise].⁴

Please note all corrective plan documentation and correspondence should be sent to the Corrective Action plan Specialist in accordance with the dates specified above:

Sandra Ramsey
Sandra.ramsey@doe.virginia.gov

APPEAL INFORMATION:

Please note that the findings in this Letter of Findings are specific to this case. While general rules are cited, findings in other cases may differ due to distinctions in the specific facts and issues in each case.

Either party to this complaint has the right to appeal these findings within 30 calendar days of our office's issuance of the Letter of Findings. Any appeal must be received by our office no later than **July 1, 2024**.

Enclosed is a copy of the appeal procedures. Written appeals should be sent directly to:

Patricia V. Haymes
Director - Office of Dispute Resolution and Administrative Services
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23218

An appeal may also be filed via e-mail correspondence to ODRAS@doe.virginia.gov, or via facsimile transmission to (804) 786-8520.

A copy of the appeal, along with any submitted documentation, must be sent simultaneously to the non-appealing party. Questions regarding these procedures should be addressed to Ms. Sheila Gray at 804-750-8143, or e-mail at: Sheila.gray@doe.virginia.gov.

Attachment - Appeal Procedures

⁴ In accordance with 8 VAC 81-200.F, "such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise." The plan of action should include a description of all changes contemplated and is subject to approval of the Virginia Department of Education. Failure to provide a plan of action which is subsequently approved by this office that may include corrective actions extending beyond 30 business days may result in a referral to the Superintendent of Public Instruction or designee for review and may result in a referral to the Virginia Board of Education. (8 VAC 81-200.G)